

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)	
)	DA 12-699
Emergency Communications by)	GN Docket No. 12-91
Amateur Radio and Impediments)	
To Amateur Radio Communications)	

To the Commission:

**PETITION FOR RECONSIDERATION FROM
DENIAL OF PETITION FOR DECLARATORY RULING**

COMES NOW the Petitioner, JAMES EDWIN WHEDBEE, who pursuant to Section 1.106 of the Commission's rules (47 CFR 1.106), and being first aggrieved by the May 3, 2012 Order under delegated authority by Scot Stone on behalf of the Wireless Telecommunications Bureau denying his Petition for Declaratory Ruling terminating a controversy, namely, codes, covenants, and restrictions-including homeowner association rules ("CCRs" hereinafter)-limiting amateur radio station licensees' uses of fixed station facilities, respectfully petitions the Commission rescind and reconsider said Order and instead sustain his original Petition for Declaratory Ruling. In support hereof, Petitioner states as follows.

[1] The Commission's rules at Section 1.2(b), state: "*(b) The bureau or office to which a petition for declaratory ruling has been submitted or assigned by the Commission should docket such a petition within an existing or current proceeding, depending on whether the issues raised within the petition substantially relate to an existing proceeding. The bureau or office then should seek comment on the petition via public notice. Unless otherwise specified by the bureau or office, the filing deadline for responsive pleadings to a docketed petition for*

declaratory ruling will be 30 days from the release date of the public notice, and the default filing deadline for any replies will be 15 days thereafter.” In issuing its May 3, 2012 Order, the Commission violated this subsection of its rules, in that the comment and reply comment period provided for in the rules and regulations is the determiner of whether or not a controversy exists rather than the deputy chief’s reliance on a 26 year old order in which technology and the circumstances of emergency communications (particularly in a post 9/11/’01 world) were vastly different.

[2] The Commission MUST enforce Section 310(d) of the Communications Act (47 USC 310). The Commission was INVITED to reconsider the issue of CCRs in the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, Section 6414 (2012) (“Pub.L. 112-96, Section 6414” hereinafter). Reliance upon a 26 year old Order issued by a Commission bureau which no longer exists is arbitrary and capricious in that the circumstances surrounding the matter of CCRs is different than when PRB-1 was issued, namely in the following particulars: (a) the Amateur Radio Service is the de facto, if not de jure, emergency communications service which states and localities rely upon in their homeland security policies and procedures-this certainly was not the case in 1986; (b) Congress has not taken a particular interest in this issue until now-given that the Amateur Radio Service provides emergency communications services free of charge, it is in the national security interests of the United States of America to revisit whether CCRs are an impediment to the Amateur Radio Service; accordingly, Congress commanded the Commission to consider the issue: by Congressional mandate alone, a controversy exists whether or not the Commission has the political will to accept that Congressionally-established fact; (c) the Commission has already waded into the waters of preemption of private CCR’s with the over-the-air reception device preemption, and cannot now

gainsay its own actions simply because the Amateur Radio Service uses active versus passive antennas, therefore, the Commission itself created and verified the existence of such controversies; and, (d) longstanding history of PRB-1 and the repeated pleas of the amateur radio community to have PRB-1 extended to CCR's verifies the pernicious and continuous existence of a controversy. The denial of the Petitioner's Petition for Declaratory Ruling was, in light of these uncontroverted facts, arbitrary and capricious and against the manifest weight of the evidence to the contrary.

[3] Section 310(d) of the Communications Act prohibits unqualified homeowners' associations from obtaining control over-whether by way of restraint or otherwise-licensed radio station operation, including the licensed fixed station operations of Amateur Radio Operators. The Commission cannot issue a blanket ruling granting all unqualified homeowners' associations such control; accordingly, the denial of the Petition for Declaratory Ruling violates federal statute and is a breach of the Commission's ministerial duties. To be clear, CCRs are a violation of Section 310(d) of the Communications Act for their effect of taking control away from licensees and transferring such control to an unqualified homeowners' association.

[4] Pub.L. 112-96, Section 6414 is an open door through which Congress not only expects a report from the Commission, but likewise, undoubtedly anticipates actions by this Commission to avoid inconveniencing Congress with matters the Commission should have already long ago dealt with in a different fashion.

[5] Because this matter may require a level of political courage exceeding the level at which delegated authority permits, Petitioner informally requests in connection herewith that the Commission, en banc, take up this Petition for Reconsideration and give it more than salutary

consideration, but rather extensive, scholarly, detailed, and studied deliberation with a correspondingly developed order. The mandate of Congress in Pub.L. 112-96, Section 6414, requires no less.

WHEREFORE, the Petitioner prays the Commission's Order vitiating Order DA 12-699 and favorably reconsidering the Petition for Declaratory Ruling by declaring same void as contrary to Section 310(d) of the Communications Act, as contrary to public safety, and as contrary to public interest.

Respectfully submitted:

A handwritten signature in black ink, appearing to read 'J. Whedbee', with a stylized flourish at the end.

May 3, 2012

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